

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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:
COMMONWEALTH OF VIRGINIA :
:
-VS- :
:
CLARK DEVELL WATSON, :
:
Defendant. :
:
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CRIMINAL DOCKET NO.
FE-2019-0000279

Circuit Courtroom 4H
Fairfax County Courthouse
Fairfax, Virginia

Friday, October 23, 2020

The above-entitled matter came on to be heard
before THE HONORABLE DONTAÉ L. BUGG, JUDGE, in and for the
Circuit Court of Fairfax County, in the Courthouse,
Fairfax, Virginia, beginning at 9:07 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

LAUREN E. HAHN, ESQUIRE
Assistant Commonwealth's Attorney

TYLER BEZILLA, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

BRYAN KENNEDY, ESQUIRE
Senior Assistant Public Defender

On Behalf of Cybergenetics:

BRANDON R. SHAPIRO, ESQUIRE

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P R O C E E D I N G S

(The Court Reporter was sworn by the Clerk of the Court.)

MR. KENNEDY: Good morning, Your Honor. Bryan Kennedy from the Office of the Public Defender on behalf of Mr. Watson.

THE COURT: Good morning, Mr. Kennedy.

Calling the matter of Commonwealth of Virginia versus Clark Watson, FE-2019-279. Mr. Watson is present in court --

Good morning, sir.

THE DEFENDANT: Good morning, Judge Bugg.

THE COURT: -- in the custody of the Sheriff's Department with his counsel, Mr. Kennedy. On behalf of the Commonwealth, Ms. Hahn and Mr. Bezilla are present as well as counsel for Cybergenetics, Mr. Shapiro.

MR. SHAPIRO: Good morning.

THE COURT: This matter is on the Court's docket this morning for a review from our hearing last week or the week before last as well as Mr. Watson's motion for bond.

Mr. Kennedy, I'll hear from you first in terms of status of the compel order.

1 MR. KENNEDY: Your Honor, the bond motion,
2 I'll say, is related to the status and the compel order.
3 That's why I noticed the Court for that today.

4 THE COURT: And I think at first it was going
5 to be with Judge Oblon, but once reviewing the bond motion
6 we will go ahead and take it up now.

7 MR. KENNEDY: Thank you. So after the Court's
8 ruling last week, I spoke to my expert. And by way of a
9 little bit of background, I've been working with him for
10 over a year on this case. It's also a unique case because
11 it's not just a DNA issue, it's a computer science issue
12 and a statistics issue. So the reason I have this
13 particular expert is because in the same shop it's a PhD
14 biologist, who's a DNA expert; a computer science expert;
15 and a PhD statistician who all work together, and it's
16 only one payment for the group. So it basically is I
17 think better for the Commonwealth, better for us, and
18 obviously we have all of the expertise in the same group
19 who work together.

20 So speaking to my expert, I asked him about
21 traveling and cost, and that's when he raised with me that
22 during the pandemic he has not been doing work-related
23 travel because his partner with whom he lives is medically

1 vulnerable to COVID to the point where she has a -- her
2 work is back, but she has a medical clearance to not go to
3 work and is working at home full-time. And my
4 understanding from him is she basically doesn't leave the
5 house. He leaves the house to go to his office where he
6 works alone and then he does all of the other life things
7 that people would need to do.

8 Also, my expert is basically doing the same
9 thing for his two elderly parents, who are vulnerable to
10 COVID, who also live in the same city. He is basically
11 the only person taking care of all of those people. So
12 because of that he is not comfortable traveling anywhere
13 or staying in public accommodations, going to someone
14 else's office. And I think that's perfectly reasonable
15 given his family's situation at the moment. So basically
16 right now it's not going to be possible for him to go to
17 Mr. Shapiro's office to view the source code.

18 So I was following up with him to try to talk
19 through some strategies that we might be able to get
20 around that issue. The first one, and because we've still
21 -- we don't have an order to the Court from the last
22 hearing yet because Cybergenetics had some thoughts on the
23 order I drafted, so we've been still going back and forth

1 to actually try to work that out before we had to involve
2 the Court, and I think we're going to be able to work that
3 out.

4 But we didn't have a protective order so I
5 wasn't able to go see the computer yet. But obviously
6 there is the ability for someone like I've had my IT
7 people do to my computer, remote into a computer. They
8 can access the computer; they can look at it and then
9 basically go out of it. So the actual computer can stay
10 in Mr. Shapiro's office. But I don't know what
11 Cybergenetics' position is on that. If I had to guess, I
12 think I know Cybergenetics' position would be on that, but
13 that's the best workaround we found.

14 The other workaround is obviously the one that
15 I suggested the last time, which is that the secured
16 laptop or tablet, whatever it is, be sent to my expert in
17 Ohio. He would obviously still be subject to the
18 protective order, subject to the contempt power of this
19 Court. He has no interest in going beyond that because
20 his job is being an expert for courts. He's a forensic
21 computer scientist along with other forensic analysis in
22 his practice. So he has no interest in violating that but
23 that would be a way to keep it all together, go there, and

1 come back. Those are two workarounds.

2 Obviously, right now, we're trying to find
3 workarounds for court, work jury trials, for everything at
4 the moment, and those were the two things we could come up
5 with that would protect his family and try to protect
6 Cybergenetics and try to work around those goals as well.

7 So the third option there is that we have to
8 continue the case until a time when we could make this
9 happen. If Cybergenetics won't let this material
10 information that we all agreed at this point is material
11 and subject to a valid subpoena, if we can't do it now, we
12 can't go to trial. Cox against Commonwealth, I cited it
13 in my motion, says it's error to go forward without the
14 Defense having access to material information.

15 At Term Day yesterday, I had a trial set for
16 December 6th of 2021. That was the next trial, so we're
17 talking about over a year before. And, god-willing, we
18 will be moving trials up if something good happens in
19 terms of a vaccine and safety, but as of right now the
20 next available trial dates are at best 13, 14 months away.
21 And that's where my bail motion comes in because if that's
22 the only solution we can reach, that Cybergenetics won't
23 let us use these remote options, if we have to continue it

7
1 out that far in the hopes that just losing this trial date
2 we're going to have to continue out that far anyway, but
3 then hopefully in the next year, we'll be able to work
4 this out, things will get better, and my expert will be
5 able to come out here, whatever it is. If we're doing
6 that then I need to ask for bail.

7 So I won't make my bail argument at this time,
8 but that's the status of the case right now depending on
9 where we go. And obviously, I would like to make a bail
10 argument if we need to get there.

11 THE COURT: Okay. Mr. Kennedy, do you have
12 any indication from your expert if his status at home with
13 COVID and not traveling is going to impact his ability for
14 the current trial date?

15 MR. KENNEDY: So the current trial date, if
16 that was kept and we were going forward to trial, I would
17 be asking that he appear remotely.

18 THE COURT: Okay.

19 MS. HAHN: And Your Honor, we'd either be
20 objecting or probably asking that some of our witnesses
21 appear remotely, such as any elderly witnesses we have,
22 maybe the federal prisoner in Kentucky, who a writ --

23 THE COURT: Do you have elderly witnesses?

1 MS. HAHN: Your Honor, I think that the
2 victim, at this point, is probably over 50 based on just
3 my review of the video.

4 THE COURT: That's elderly?

5 MS. HAHN: Sorry.

6 (Laughter.)

7 MS. HAHN: Maybe over 60, but I don't know his
8 health situation. I haven't --

9 THE COURT: I think you're going to offend
10 some people in this room.

11 (Laughter.)

12 MS. HAHN: I haven't inquired, Your Honor, but
13 I think it would be, from what I've seen with some of
14 these virtual hearings, extremely difficult to have an
15 expert remotely. Judge Gardiner and I had a three-hour
16 competency hearing with experts down in Western State. It
17 was a disaster. You couldn't hear people half the time.
18 It was really hard to cross or direct them. So we'd
19 really have to discuss that, if that what is being
20 suggested by counsel.

21 MR. KENNEDY: Your Honor, I will just point
22 out that the Commonwealth does not have a confrontation
23 right, so it's a completely different analysis about

1 people appearing by video between Defense expert and a
2 government expert. Although, I will say, I agree that the
3 best practice would not to be to have that happen, to
4 someone appear by video. I would be doing it because Mr.
5 Watson is incarcerated, has speedy trial rights, has jury
6 trial rights; the government doesn't have a confrontation
7 right; and to get that case tried that day that's how we
8 would do it. And obviously that would only be if the DNA
9 came in and the Court denied my pending motion. So
10 there's a lot of moving parts there, but that's we're we
11 are.

12 THE COURT: All right. Ms. Hahn or Mr.
13 Bezilla?

14 MS. HAHN: Your Honor, I think most of my
15 comments would refer to the bond motion, so I can hold off
16 on those until we argue that. So I don't know if the
17 Court wants me to address something in particular or if
18 the Court wants Mr. Shapiro to address it because it seems
19 like the question right now is a reconsideration of the
20 Court's ruling from last week about how the source code is
21 going to be provided to the Defense expert.

22 So we join in Mr. Shapiro's position. We
23 think that Cybergenetics has been eminently reasonable at

1 this point in saying we're going to make this available,
2 you can even take photographs of it, you just have to do
3 it in a protected situation. And frankly, the
4 Commonwealth thinks this has really gotten pretty out of
5 hand.

6 So I'll let Mr. Shapiro address the Court as
7 to that reconsideration and then I'm happy to address the
8 Court about bond.

9 THE COURT: All right. Thank you.

10 Mr. Shapiro?

11 MR. SHAPIRO: Your Honor, if it may please the
12 Court? First, thank you to Ms. Hahn. I will tell the
13 Court, we never received a copy of the motion until about
14 5:00 p.m. from Ms. Hahn last night.

15 And of course, needless to say, it's actually
16 directing Cybergenetics as part of our motion to amend or
17 reconsider, we would be 100 percent opposed to sending it
18 Ohio with the same concerns. As the Court is well aware,
19 remote access or sending it there doesn't provide any
20 safety. And the reason for it is one of the protective
21 orders I -- Mr. Kennedy has sent me a protective order and
22 I kind of redrafted it just to limit it to be sweet and
23 simple to exactly what the court order and what

1 Cybergenetics asked for in this case.

2 But one of the concerns, and we put it in the
3 protective order, is not to be able to record or copy in
4 any format. Well, if they're remotely accessing -- and I
5 will tell the Court, it's on a iPad. I don't think they
6 can even remotely access that, but it still doesn't
7 protect us. We don't know on the other side what they're
8 doing. They could be sitting there with a video camera
9 basically right at it recording every little thing, even
10 though they're not printing it.

11 If we send it to Ohio, same predicament. And
12 I know we talked about like ransomware situation with the
13 county schools. They could easily sit there with their
14 video camera and record that too right off of it, just
15 slid from page to page to page and then they have the
16 whole code, whichever they can do with it. They can
17 market it themselves, if they want to.

18 Everyone hopes that everyone would be honest,
19 but as the Court knows, it's a business, and if someone
20 gets their hands on it, they could use it to their benefit
21 down the road, and there might not be any way to prevent
22 that.

23 But what I would submit at this time is that I

1 understand it's a pandemic, but the nature of an expert,
2 especially if you're coming from Ohio for business in
3 Virginia, is that there's going to traveling. And what I
4 would submit to the Court is that one option is that we
5 provide funding for someone like me to go up with it, the
6 iPad, and I can meet him at a neutral source and they can
7 sit in there and review it, so I can monitor to make sure
8 -- not that I want to spend my ten-hour days sitting in a
9 room with them.

10 The other option is that, I hate to say it, I
11 understand he has elderly parents and takes care of them
12 and works with these other individuals, but he can also
13 come here and then quarantine himself for 14 days as the
14 CDC has always required, you know, when you've traveled
15 somewhere to quarantine for the 14 days to protect. But I
16 don't think that is enough at this point to violate, what
17 I would say, provide this whole source code with any sort
18 of restrictions whatsoever.

19 I think what the Court ordered last time, and
20 I think what Cybergenetics offered in the sense of what is
21 their business is extremely reasonable under these
22 circumstances.

23 And unfortunately, it's their expert. I

1 understand why they're retaining this individual, but
2 that's the nature of the business. If you're an expert
3 from Ohio and you're seeking out business in Virginia or
4 throughout the United States it is known you're going to
5 be traveling. You can't think that every time a case
6 comes up that they're going to send you directly all the
7 evidence in this case. And I submit to the Court that
8 that is not good cause to amend it and I would ask the
9 Court to deny that part of it.

10 And I will tell the Court just briefly --

11 THE COURT: Hold on a second.

12 Am I missing a secondary motion?

13 MR. SHAPIRO: Well, deny their
14 reconsideration.

15 THE COURT: There's a reconsideration that was
16 filed?

17 MR. SHAPIRO: So in their actual order they --

18 MS. HAHN: I think it's Section 6 --

19 MR. SHAPIRO: Right.

20 MS. HAHN: -- I guess, of the motion.

21 MR. KENNEDY: Your Honor, I filed a bail
22 motion, which is why I did not send it to Cybergenetics
23 because I don't need to inform private companies if I'm

1 going to ask for bail in a case. As part of my bail
2 motion, I just was laying out what I just laid out to the
3 Court --

4 THE COURT: I gotcha.

5 MR. KENNEDY: -- so that the Court would know
6 basically the purpose of this is as one of the potential
7 solutions to the problem, it would require me asking for
8 bail.

9 THE COURT: I understand. I just wanted to
10 make sure I didn't miss an entire motion.

11 MR. SHAPIRO: And I will tell the Court, my
12 reading of it, as Ms. Hahn sent it to me last night, was
13 that it was we're asking for conditions of bail, but we're
14 also asking the Court to reconsider because it does
15 mention in there that it's going to address that with the
16 Court. And that's why I refer to it as a motion to deny
17 the motion, but I would ask the Court not to order such
18 and still impose the protective order that we entered last
19 time at the last hearing. And I would tell the Court, I
20 do have -- Mr. Kennedy and I are still working on that.

21 And one thing just for clarification, we were
22 doing -- Mr. Kennedy sent the draft order to me. The
23 protective order, I don't think we're going to have issue

1 with going through with the drafted one, it's the main
2 order that says what the Court's actual rulings were. And
3 one of the things Cybergenetics took -- and I honestly
4 don't remember, and I didn't order the transcript -- was
5 that whether the Court -- there were two things really in
6 there: one is that Cybergenetics had not complied with the
7 Court's order, was not in compliance; and number two was
8 that they had been validly served with process.

9 What I would submit to the Court is I believe
10 is I don't think we ruled they hadn't complied, what we
11 did is we denied the motion to quash; we 100 percent said
12 that Cybergenetics had availed themselves of the Court's
13 jurisdiction. I don't think we ever ruled that they were
14 validly served with process.

15 The problem was, as the Court noted, and I
16 apologize, was that in my motion I said they had never
17 filed anything with the Circuit Court and it turned out
18 they had be First Class Certified Mail, I guess. And
19 then, of course we didn't file our motion simultaneously.
20 And the Court said we had availed ourselves. I don't
21 think ever actually addressed to say whether it was a
22 proper service of process. The fact remains that they
23 responded; we responded. That does avail us of the

1 jurisdiction of the Court as the Court said. And I don't
2 think we ever ruled they weren't in compliance, but I
3 think we kind of just said okay, we're going to order the
4 reconsideration, amend the protective order to have them
5 the ability to come to our office and review it. And
6 that's the only thing I'd ask for clar -- that's the only
7 question that I had with Mr. Kennedy in our order on that
8 matter.

9 THE COURT: All right.

10 MR. SHAPIRO: Thank you.

11 Mr. Kennedy?

12 MR. KENNEDY: Your Honor, in terms of the
13 Commonwealth's position that this as getting out of hand,
14 it's not getting out of hand because of Mr. Watson. Mr.
15 Watson is trying to get access to material information
16 that the Court has ruled is material to defend himself
17 against a life offense that the Commonwealth has brought
18 by choosing to use certain evidence, which it does not
19 need to use if doesn't want to, but I guess it can use,
20 against a company that's been trying to keep its
21 conviction box secret for years. That's where we are.

22 This is a difficult case. It's difficult
23 litigation. I get that. And we're moving along, quite

1 frankly, a lot closer than I thought we were going to at
2 the beginning.

3 When I retained this expert, he was 100
4 percent and has for years flown all over the country. And
5 when we initially got the Cybergenetics NDA that required
6 him going to Pittsburgh, he said, "If push comes to shove,
7 I can go to Pittsburgh." We had that whole conversation:
8 how much would it cost, how long, how many days. The
9 intervening issue between that conversation and today is a
10 worldwide pandemic that is killing thousands of Americans
11 every day, and it's killing people like my expert's
12 partner and parents.

13 And I know Mr. Shapiro says part of the deal
14 is you have to travel. That's true, but part of the deal
15 is not I have to risk my family's life to go to Virginia.
16 Because, quite frankly, what's going to happen is if
17 that's the only thing that can happen, he's not going to
18 come because he doesn't have to, because the contract, he
19 can end the contract and say I'm not going to endanger my
20 family's life. And then where am I? I have a right to
21 effective assistance of counsel, and Mr. Watson has a
22 right to expert assistance. I need the expert assistance.
23 We've already found a particularized need. I have to get

1 a new expert.

2 And I actually spoke to my expert and spoke to
3 a few other people about whether there's someone in
4 Virginia or Maryland who does this. And the answer is no.
5 There's only a few experts around the country that are
6 dealing with the computer science of source code for
7 probabilistic genotyping, and you need that specialized
8 knowledge. And again, having everyone together -- because
9 otherwise I have to find a DNA expert who knows about
10 probabilistic genotyping. There are a few of those people
11 obviously around. Then I have to find a computer
12 scientist, get those two together to catch the computer
13 science up to science because you can't really review the
14 source code to know if it is running the math correctly
15 unless you know what the math is. So that's where it's
16 all difficult.

17 So that's where -- if the proprietary
18 information is their right to protect that and the Court
19 is crafting an order to protect that, the only way to get
20 around that, and I suggested these other alternatives
21 because I think as an officer of the Court that's what I
22 need to do. I came to the Court. The Court instructed me
23 go figure out how we can make this happen under my order.

1 I tried to do that. I hope what the Court sees is I
2 looked at can I get a new expert; can I do this; can I do
3 that; can I do that.

4 I wanted to exhaust all of that because quite
5 frankly, what we really want is to go to trial on November
6 30th with an expert, if the Commonwealth is going to
7 insist on using this evidence and the Court denies my
8 motion, and have the trial then. That's what Mr. Watson
9 has wanted for a while. But if we can't do that, the only
10 option, no matter what the Court wants to do with my
11 expert, is we can't have the trial on November 30th
12 because if I can't get someone into that office to see
13 that information, the only option is a continuance and
14 then we're talking about 2022. And that's, again, where
15 my bail argument would need to be taken up.

16 I think that's all I have to say on the status
17 issue.

18 THE COURT: All right. One moment, the Court
19 is going to take a brief recess.

20 (Recess.)

21 THE COURT: Back on the record in the matter
22 of Commonwealth versus Watson. I have an understanding of
23 the status, and before making a decision on that, let's

1 take up the bond motion because I think they're so
2 interrelated I can make one ruling at the same time.

3 So Mr. Kennedy, I'll hear from you on Mr.
4 Watson's motion for bond.

5 MR. KENNEDY: Your Honor, quite frankly,
6 independent of these issues, Mr. Watson is a good
7 candidate for bail, but certainly with these issues, Mr.
8 Watson is a good candidate for bail. The charge before
9 the Court is a robbery and use of a firearm from 2014.
10 That's the date of offense. It wasn't actually charged
11 until I think 2018.

12 The actual facts of the case are a pretty run-
13 of-the-mill robbery with a gun at the 7-Eleven. Two men
14 with faces covered come into the 7-Eleven, tell the clerk
15 to get down. One of them has a firearm. They go behind
16 the counter; they pull out the phone cord; they take money
17 out of the register, and they leave.

18 That case went unsolved, as I mentioned, for
19 about four years. About four years later, the Federal
20 Bureau of Investigation and the United States Attorney for
21 the Eastern District of Virginia went to a federal prison
22 that at that time was out in either New Mexico or Arizona
23 to talk to a cooperating witness. That witness had been

1 sentenced on -- I think he got sentenced on eight Hobbs
2 Act robberies, but his proffer included about 20 or 30
3 Hobbs Act robberies, including a robbery of this same 7-
4 Eleven on a different date. That witness was shown a
5 picture, a grainy still from the video in this case. He
6 said, "Who are those people?" And he said, "Oh, that's
7 Clark." So that's how the Feds became involved in the
8 case.

9 They eventually passed the case off to the
10 Commonwealth Attorney's Office where they then went
11 through DNA testing; they did the standard PCR testing.
12 That came back inconclusive. It was a complex mixture
13 with too little information. They then did -- I think
14 they did Y-STR as well and then they did TrueAllele. And
15 that's how we ended up here.

16 The actual person who was the clerk of the
17 store at preliminary hearing could not identify Mr. Watson
18 as a person who did the robbery.

19 So at the time Mr. Watson was served with
20 these warrants, he was serving a federal sentence for
21 unlawful possession of a firearm out of the District of
22 Columbia. That sentence has been over now for many
23 months. I think it ended in March.

1 He, if released, is on three years' supervised
2 release with the Superior Court in the District of
3 Columbia, so he will be supervised in the District of
4 Columbia there. He would live at [REDACTED]
5 [REDACTED] in D.C. That's with his aunt, Crystal Pimble. I
6 verified that with her that he would go right there and
7 live with her.

8 Obviously, Mr. Watson's incarceration has
9 already had a pretty big impact on his life. His wife
10 died since he's been incarcerated on this case in this
11 jail. At the time we couldn't do a furlough because he
12 was still held on the federal sentence.

13 He has children with his wife. They were
14 subject to a hearing in D.C. Superior on their
15 guardianship. I was in touch with D.C. Superior Court on
16 Mr. Watson's behalf where he expressed his desire to
17 obviously stay in his children's lives, get custody, care
18 for his children, but because of his incarceration the
19 Court there entered a temporary custody order for one of
20 his family members to take care of the kids. But
21 obviously, he has links to the area, is anxious to get
22 back and help his family as much as he can.

23 His record includes a couple distributions. I

1 don't have the dates there with me but those were with
2 from some time ago. There is a robbery on his record.
3 That's from 1994, and I think that's his only other
4 violent offense, but that's from obviously almost 20 years
5 ago.

6 So he is not a risk of flight; he's not a risk
7 of danger; he's going to be on probation. The Court can
8 also put him on SRP. He has a verified address. He will
9 obviously look for employment and get assistance there
10 with probation. And especially given the other issues
11 we've raised today, I would submit he's a good candidate
12 for bail.

13 THE COURT: All right. Thank you.

14 Ms. Hahn?

15 MS. HAHN: Thank you, Your Honor. Your Honor,
16 as the Court can aspect, we're strongly opposed to bond in
17 this case as we have been in previous bond motions. And
18 there was a bond motion before Judge Bellows, I think,
19 over COVID. I want to say it was in March or April, and
20 that was denied.

21 So I want to remind the Court of some of the
22 dates in this case. I know this Court has presided over a
23 number of motions over the past probably year and a half

1 at this point, and this is really a tortured history.

2 Some of Mr. Kennedy's facts and dates about
3 the inception of this case are a little bit inaccurate.
4 This Defendant was ID'ed by Corey Rodgers in federal
5 custody after I was involved in the matter. So I was
6 originally approached by Detective McAuliffe (ph), who had
7 been in contact with Becky Bellows in EDVA, told that they
8 believed that we had a robbery we might want to pursue
9 with this Defendant as one of the suspects in that
10 robbery. And it was after that fact before I charged it
11 that I wanted to make sure that this was a good ID and I
12 sent an FBI agent out to that federal facility to speak
13 with Mr. Rodgers.

14 So regarding the facts of the case, I don't
15 know that I agree with a run-of-the-mill description. It
16 is certainly a run-of-the-mill violent commercial armed
17 robbery. It is this Defendant that had the firearm. That
18 is clear from the identification from Mr. Rodgers. This
19 Defendant pushes the victim down to the ground behind the
20 counter; there's a gun at head-level at some point during
21 this. It's very violent, very scary of course for the
22 victim, and a frightening incident for the community. So
23 this is not just a couple guys go in, ask for some money,

1 and leave. There was physical contact and gun-to-the-head
2 type of behavior that occurred.

3 So I just want to remind the Court and Mr.
4 Kennedy that the Commonwealth filed a DNA notice in this
5 case June 6 of 2019. He was brought over and a prelim was
6 held March of 2019. Then in July of 2019, we were before
7 this Court with Mr. Kennedy requesting a continuance for
8 all of this DNA evidence. And this Court I think had a
9 very hard time with that continuance motion and considered
10 denying it because Mr. Rodgers was over here in our ADC in
11 isolation.

12 And Mr. Rodgers is in Kentucky at this point I
13 believe, although, there have been some transfers that
14 have been discussed. So I'm not exactly sure where that
15 puts him, but a writ has been issued for him to be brought
16 over within the next couple weeks, if he hasn't been
17 brought over already.

18 So this is probably the fourth writ that I've
19 issued for him in this case. And when I say this is
20 getting out-of-hand, it really is. The number of
21 subpoenas that have been issued in this case, the number
22 of continuances are really beyond the pale.

23 So we are back in June or July, I'm objecting

1 to a continuance. This Court because of various issues
2 decided to continue it, and I sent Mr. Rodgers back to
3 federal custody. And that was over a year ago, and here
4 we are back again with Mr. Kennedy still not having made
5 really any progress whatsoever on this DNA motion that he
6 wants to pursue. And it was back in September of 2019
7 that Cybergenetics responded to the subpoena duces tecum.
8 So that was over a year ago that Mr. Kennedy has had all
9 of this time to start this litigation that is before the
10 Court right now. We are a year past that.

11 I would submit to the Court at this point if
12 the issue is with Mr. Kennedy's expert, then he needs to
13 get another expert or he needs to find some way to make
14 this work because we have a November 30th trial date that
15 his office fought for at Term Day. I got up before Judge
16 White and said, "I don't believe there's anyway this going
17 to be ready for trial considering the DNA situation."

18 And there people and incarcerated defendants
19 who were not given that trial date because Mr. Kennedy and
20 his office wanted it. They wanted the November 9th trial
21 date. They wanted the first trial date before this Court,
22 and I made it clear to Judge White that that was a bad
23 idea and we didn't set that.

1 So now he wants to continue a case off of a
2 date that is highly valued to this Court and other
3 defendants, probably too late for another case to be set
4 then. And I would submit to the Court that that's -- it
5 is very unfair to the Commonwealth, to other defendants,
6 and to this Court.

7 I think throughout this case Mr. Kennedy has
8 been holding the Court and the Commonwealth hostage with
9 this DNA litigation. And now he's saying hey,
10 Commonwealth, don't use your evidence or my client gets
11 out on bail on a presumption case with a prior robbery on
12 his record for a gun-to-the-head robbery. And the
13 Commonwealth thinks that's entirely inappropriate, that
14 this Defendant is not appropriate candidate for bond.

15 His address that he would live at, I'll tell
16 the Court, Ms. Pimble presumably is mother or relative of
17 Quintin Pimble, who was his co-defendant in this robbery
18 and is serving, I want to say 20-plus years in federal
19 prison. This was a serial ring of robberies that occurred
20 with Mr. Watson, Rodgers, and Pimble.

21 I can't explain to the Court some of the
22 decisions that went into the federal government deciding
23 not to prosecute Mr. Watson, but I'll tell the Court that

1 Mr. Rodgers has described numerous incidents with this
2 Defendant. He is older than both of those other
3 defendants. I don't think that earlier robbery on his
4 record is mitigating because it was old, I think it's
5 aggravating because it shows that for decades this
6 Defendant has been committing robberies and continues to
7 do so.

8 The Commonwealth has no belief that this
9 community would be safe if this Defendant was released.
10 He was in federal custody at the time of the serving of
11 these warrants for a firearms offense. It is clear that
12 this Defendant will continue to commit offenses and that
13 those offenses will be violent, so we would strongly
14 oppose bond.

15 And I would tell the Court, I think that Mr.
16 Shapiro has offered numerous options for Cybergenetics to
17 make it work with this expert. At this point the
18 Defendant has rights to have an expert, and an expert is
19 choosing to some degree, but it can't be unreasonable.
20 And we have reached an unreasonable place in this case
21 where we have a trial date that is probably the tenth or
22 more trial date that has been set in this case.

23 We have a defendant who's a violent offender,

1 whose guidelines I believe are between -- Mr. Kennedy can
2 correct me -- maybe 13 to 20 years, I want to say is where
3 the guidelines are. He's not even close to the low end of
4 the guidelines on the time served so far.

5 We would strongly object to bond and ask the
6 Court to deny his motion and direct his expert to either
7 respond here to Virginia or facilitate this in a way that
8 allows us to go to trial on November 30th.

9 THE COURT: All right. Thank you.

10 Mr. Kennedy?

11 MR. KENNEDY: Your Honor, in a normal case, I
12 issue a subpoena to the Department of Forensic Science,
13 which I did in this case; they send me their file, which
14 they did in this case; and I can send it to an expert in
15 Virginia, which I would have done in this case if that was
16 the situation, and then we go forward on it. That's how
17 we do 90 percent of the DNA cases, and in this Court
18 that's how we do 99 percent of the DNA cases. This case
19 is complicated. It's complicated because the Commonwealth
20 chose to use an emerging software that the company has
21 kept hidden, and we already talked about that.

22 But we have a person who has a verified
23 address. We have an offense that occurred in 2014 for

1 which Mr. Watson was not incarcerated until 2018. The
2 Commonwealth talks about he's a part of this string of
3 robberies. I have a feeling that if they had actual
4 evidence of that they would have charged them either in
5 this Court, some other jurisdiction, or in the federal
6 court. They have not done any of that. He has not been
7 charged with any other robberies.

8 Their star witness has been charged with a
9 bunch of robberies and is serving a 30-year sentence in
10 federal court. That's going to go to the weight of the
11 evidence, among other things, because he's trying to get a
12 Rule 35.

13 But, here, what we're talking about is there's
14 material evidence that the Commonwealth has conceded is
15 material that is not back that we need to have an expert
16 look at because I don't know anything about source code.
17 But has it been a journey? Yes, but it's a journey
18 because of the complexity of the case.

19 And where we are right now is given the
20 complications of COVID-19, which it always seems that it's
21 the criminal defendant who has to give up rights with
22 COVID-19 issues, it's not the Commonwealth, it's not a
23 private company. It always seems to come down to my

1 clients have to be endangered in jail; my clients have to
2 have less than perfect jury trials; my clients have to
3 have all their speedy trial rights taken away. And this
4 is not one that the Supreme Court has taken away yet, the
5 right to call for evidence in your favor, and it would be
6 error to proceed at this point without us being able to
7 look at this evidence.

8 I wish we could go could forward on November
9 30th. I would ask the Court to grant my motion to exclude
10 DNA so we could go forward on November 30th, but short of
11 the Court making decisions on that the only option here is
12 to pick another trial date, which won't be for a long
13 time.

14 Mr. Watson is not a flight risk; he's not a
15 danger to the community on any actual facts other than the
16 1994 robbery and this old robbery as well. And he is
17 going to be supervised by the District of Columbia and by
18 this Court, if the Court puts him on SRP. Those are the
19 least restrictive alternatives for bail. I'd ask the
20 Court to admit him on those and whatever other conditions
21 the Court deems fit so that we can get this case tried in
22 a constitutionally acceptable fashion.

23 THE COURT: Thank you, Mr. Kennedy.

1 All right. Just a moment.

2 (Pause.)

3 THE COURT: What the Court is going to do on
4 Mr. Watson's motion for bond, I think the presumption,
5 given all the facts and circumstances, has been rebutted
6 in his case. What we have is a long, tortured history of
7 this case, if nothing else, before this particular Judge
8 and this Court in general. It's the unique circumstance
9 that the Commonwealth has made the election to use
10 Cybergenetics to prove their case, and that's well within
11 their right. The Court has to balance all of the
12 Constitutional rights afforded to Mr. Watson in light of
13 the proprietary interest of Cybergenetics, which I don't
14 know the answer of where that stacks versus a person's
15 Constitutional rights.

16 I understand Cybergenetics feels that they
17 have been very, very cooperative. Very cooperative would
18 be sending this iPad securely to the expert in Ohio. A
19 number of other things would have been very cooperative.
20 We haven't gotten to that point, and the Court will have
21 to address that at a different date.

22 But given what we have with the pandemic, the
23 identified expert, who was identified long before pandemic

1 was involved in this case and those concerns about that
2 expert being able to comply with Cybergenetics' conditions
3 that they, themselves, are placing on their ability to
4 share this information with the Defendant, who has a right
5 to review that and challenge that in court, the Court is
6 going to grant Mr. Watson's motion for bond.

7 I'm going to reset bond in this matter at a
8 \$25,000 PR bond with the special conditions, sir, you will
9 be on the Supervised Release Program with call-in status.
10 You will required to reside at the address at [REDACTED]

11 [REDACTED] --

12 MR. KENNEDY: Your Honor, apparently, I had a
13 typo. It's [REDACTED].

14 THE COURT: Thank you.

15 -- [REDACTED], and that
16 you're to comply with the terms and conditions of your
17 federal probation.

18 So as to the bond motion that will be the
19 Court's ruling.

20 MS. HAHN: Your Honor, the Commonwealth is
21 requesting that the Court stay its order so that we can
22 appeal to the Court of Appeals the Court's bond decision.
23 We would submit to the Court that this is the Defendant's

1 motion to continue and that he is causing the delay in
2 this case.

3 This is a violent presumption offense and we
4 do want to take our appeal. We will do it very quickly so
5 as to make sure that he is held no longer than possible if
6 the Court of Appeals rules in his favor, but we would ask
7 the Court to stay its order considering the nature of the
8 offense and his record and the guidelines in this case.

9 THE COURT: Ms. Hahn, you said you view it as
10 his motion to continue. Explain that to me.

11 MS. HAHN: Your Honor, the Defendant writes in
12 his motion that he will ask for a continuance in this
13 case. The Commonwealth, well, he says, "Continues to
14 insist on using the software." I would submit to the
15 Court that this is DNA evidence, this is not an unusual
16 situation for the Commonwealth to want to use DNA evidence
17 in a criminal case. So we --

18 THE COURT: Ms. Hahn, don't you acknowledge,
19 though, this is different than just calling in the usual
20 experts from DFS?

21 MS. HAHN: Your Honor, we've been using
22 TrueAllele for several years in this courthouse.

23 THE COURT: I understand that. I understand

1 that.

2 But for several years have you had a defendant
3 that has pursued that I want to challenge the source code,
4 and Cybergenetics has said, "No, you can't get the source
5 code"? That doesn't happen in every case.

6 MS. HAHN: We had the Public Defender's Office
7 challenge TrueAllele, I want to say maybe 2014, 2015. I
8 do not recall if they asked for source code as part of
9 that motion. It was not my case, so I can't tell the
10 Court that, but maybe Mr. Kennedy could. I know that
11 there are cases throughout the country and other Virginia
12 jurisdictions in which individuals have sought out source
13 code, and I know Mr. Shapiro could probably talk to that
14 more than I could after speaking with Cybergenetics.

15 But I just remind the Court that it was over a
16 year ago that Mr. Kennedy received Cybergenetics'
17 response. He has had a year to pursue this. And he never
18 asked for bond before March because his client was serving
19 a federal sentence for a firearm possession.

20 THE COURT: So he couldn't ask for bond;
21 right?

22 MS. HAHN: Well, he could have asked for bond
23 from this Court but he would have still been held

1 federally, correct.

2 THE COURT: Okay.

3 MS. HAHN: Your Honor, I think considering the
4 nature of the offense, it would be appropriate for a stay
5 to be entered. I would also tell the Court that it's been
6 five months since Mr. Kennedy's last bond motion in this
7 case, so I think the urgency to release him immediately
8 today is not there when it's been five months since that
9 bond motion.

10 Additionally, this issue with expert not being
11 able to come down to Virginia because of medical reasons,
12 that was not raised last week, that was not raised before
13 now. None of us knew about that until now and it
14 conveniently comes at the same time as asking for bond.

15 So I would ask the Court to stay the order and
16 enable the Commonwealth to note an appeal to the Court of
17 Appeals in this matter.

18 THE COURT: Mr. Kennedy?

19 MR. KENNEDY: Your Honor, I would object to a
20 stay because one of the Court's rationales, not all of the
21 Court's rationales, the Court has found that the
22 presumption to be overcome and the statutory factors in
23 that. But part of the issue here is that there's a unique

1 prejudice to Mr. Watson given the state of the world right
2 now and how long a trial date will happen.

3 Did I raise the issue with the expert last
4 week? No, because I didn't know about it because that's
5 what the Court asked me to do. I don't need to get into
6 further that comment, but that's where we are.

7 I came here for status. I filed the bond
8 motion because it became clear that we weren't going to be
9 able to go to trial on November 30th, and that's the issue
10 here.

11 If COVID hadn't happened, we would have tried
12 this case months ago. If the Court had had motions
13 dockets for several months earlier this year, which the
14 Court did not, we would have heard these motions earlier.
15 But this is not normal. We're in normal times. And
16 releasing Mr. Watson ameliorates some of these issues
17 because we won't have to deal with them right now and we
18 can deal with them in a less emergency matter and we can
19 get this figured out. But holding Mr. Watson, we don't
20 have statutory speedy trial right now, but we still have
21 Constitutional speedy trial. That's still going on; it's
22 a different calculus, but that's obviously what we'd ask
23 for.

1 A stay pending the Court of Appeals' action in
2 this case still doesn't get us there because then we're
3 still going to be back here with no November 30th trial
4 date and then we're still going to have to figure out what
5 we're going to do.

6 And the reason I didn't file for bond in
7 between March and now is because we were trying to get
8 this case tried, and that's what I've been trying to do.
9 There were things, quite frankly, many of which are beyond
10 my control. We haven't been able to do that.

11 So I'd ask the Court to deny the stay. The
12 Commonwealth still has all their rights available to it.
13 And set the case for status maybe in a month or two so we
14 can see where we are with Cybergenetics, my expert, and
15 the case in general.

16 MS. HAHN: Your Honor, just to be clear, we
17 are going to be objecting to a continuance of the November
18 30th trial date. The Commonwealth is ready to proceed
19 trial; our witnesses are ready. The victim has been
20 waiting for justice for over six years. The Commonwealth
21 does have some rights. And I don't understand the
22 continued insistence by Mr. Kennedy on speedy trials
23 rights when he is asking for a continuance. The

1 Commonwealth is ready to proceed to trial.

2 Mr. Kennedy could make this work if he wanted
3 to with Cybergenetics. He has come up --

4 THE COURT: How?

5 MS. HAHN: -- with every excuse in the book as
6 to why he --

7 THE COURT: Ms. Hahn, how?

8 MS. HAHN: Mr. Shapiro just offered to fly up
9 to Ohio and sit with his expert to go over this evidence.

10 THE COURT: Mr. Shapiro offered to do that?

11 MS. HAHN: He offered that --

12 THE COURT: Did I miss that?

13 MS. HAHN: -- about 30 minutes ago.

14 MR. SHAPIRO: Yes. What I said to the Court
15 was that I think if we could find some funding, I would go
16 up there and sit in a room and --

17 THE COURT: What do you mean by "find some
18 funding"?

19 MR. SHAPIRO: Your Honor, I can't be expected
20 to pay for myself to go up to Ohio on my own. I
21 understand it's -- but all I'm trying to do is facilitate
22 this for Mr. Kennedy, his expert. I understand the
23 pandemic. And we're just trying to make sure

1 Cybergenetics, you know, their proprietary information is
2 not --

3 THE COURT: See, that's the problem. I don't
4 believe that a third party can come to this Court and make
5 those decisions. I don't think a third party can say, "I
6 want to protect my business interest," and then this Court
7 has to jump through those hoops to get that done.

8 What authority does this Court have to give
9 any kind of funds for Mr. Shapiro to travel on behalf of
10 Cybergenetics?

11 MS. HAHN: Well, Your Honor, I could request
12 Commonwealth funds since it's the Commonwealth's -- I
13 guess it's related to the Commonwealth. Although, I think
14 they provided multiple options to this expert.

15 THE COURT: Except an option that works.
16 There's also an option of sending a secure, password
17 protected device out there.

18 They are concerned that this expert is going
19 to risk his professional career for the benefit of
20 stealing their source code, putting it on the internet,
21 and completely ruining their business's ability to make
22 any money. That is a concern of Cybergenetics. That
23 concern I have to weigh versus all of the Constitutional

1 rights that Mr. Watson has when I have the Commonwealth
2 that is electing, which is certainly the Commonwealth's
3 prerogative, to elect to use this evidence.

4 I've heard that there's a co-defendant, who
5 the allegation is that person was there. And there's
6 somebody else who says, "I've done a whole bunch of
7 robberies with Mr. Watson." The Commonwealth is still
8 electing to use this evidence.

9 I don't understand the position that we've
10 elected to do this and now it's the Defendant's fault
11 because we've selected a company that's in Pennsylvania
12 that has this proprietary interest that is not comfortable
13 with sending the iPad in a pandemic when my expert can't
14 make it and continue to hold this man and force this case
15 to go forward November 30th. I have not moved that trial
16 date. You still have a November 30th trial date. I
17 haven't gotten to that part.

18 MS. HAHN: Your Honor, I think it comes down
19 to whether, and this goes back to Mr. Bezilla's argument a
20 week ago, whether it's reasonable to even be demanding the
21 source code as part of this whole process. And when you
22 compare it to these EC/IR II cases, and that source code
23 in those cases that has deemed not needed, I think we have

1 our own position on that.

2 But putting all of that aside, I think
3 Cybergenetics has given multiple options. We started in a
4 place where Cybergenetics said they're not seeing the
5 source code until they put down money; there's a security
6 deposit; there are liquidated damages; we sit with their
7 expert who only is in -- they've gone from that to just
8 come to our office; we'll let you take pictures of this
9 stuff. And then to Mr. Shapiro saying, "I'll fly up to
10 Ohio" --

11 THE COURT: So what's the difference, Mr.
12 Shapiro? If they can take pictures in the Commonwealth,
13 why can't they take pictures in Ohio?

14 MR. SHAPIRO: Limited. I think the argument
15 was we said limited. And what I'm saying, and I think on
16 the other argument when I did the motion to --

17 THE COURT: And I think what you said was that
18 they can take pictures of parts they have --

19 MR. SHAPIRO: Correct.

20 THE COURT: -- concerns about --

21 MR. SHAPIRO: If they had any concerns, we --

22 THE COURT: -- but not the entirety.

23 MR. SHAPIRO: -- had no problem, and we were

1 talking about stipulating to that evidence as admission
2 because I understand Mr. Kennedy's argued about expert
3 testimony when it comes to criminal because we haven't
4 switched to the federal rules where, you know, they can
5 rely on basically what they've reviewed in medical
6 journals and all that matter for criminal cases.

7 MS. HAHN: And we've agreed to all those
8 stipulations. We have no objection to stipulations. If
9 the expert has health issues and wants to appear remotely,
10 we have no objections to that. I've been trying to make
11 this work for a year and a half. I've objected to a
12 number of continuances. I've sent a federal witness back
13 to custody after eight months in isolation. And I can't
14 believe we find ourselves here again with another
15 continuance and on top of that a bond motion for this
16 offense.

17 So, Your Honor, we are objecting to a
18 continuance of this case. We would like to find a way to
19 make this work. Mr. Shapiro and I are happy to work with
20 Mr. Kennedy to make this work in any way we can absent, of
21 course, of just sending an iPad. And I can't speak to the
22 trade secrets argument, Your Honor.

23 THE COURT: All right. Thank you.

1 Here's what the Court is going to do: I'm
2 going to amend the previous order that Cybergenetics is
3 ordered to send that secure -- actually, no. I'm granting
4 Mr. Watson's motion for bond as I said, declining the
5 Commonwealth's request for a stay. I'm going to set the
6 case for status on November 16th, if that's available for
7 counsel.

8 MS. HAHN: Which day, Your Honor?

9 THE COURT: November 16th or any day that
10 week. I have calendar control that week, so any day that
11 week would be available, the week of November 16th. And
12 what I am looking for is a better answer than
13 Cybergenetics' it has to be here and the expert can't make
14 it. So whether it is Mr. Kennedy, on behalf of Mr.
15 Watson, locating a different expert, which I think would
16 likely mean a continuance of the trial, or Cybergenetics
17 coming up with some way that their expert can have access
18 to this that does not require that person to be physically
19 present in the Commonwealth of Virginia. And then at that
20 point we can take up the motion to exclude or deal with
21 the trial date at that point.

22 MS. HAHN: Your Honor, November 16th?

23 THE COURT: Yes, ma'am.

1 MS. HAHN: And Your Honor --

2 THE COURT: Or any day that week.

3 MS. HAHN: -- I suppose waiting that -- I have
4 to know before then about this trial date because there's
5 a writ for Mr. Rodgers to be brought over from Kentucky,
6 and the Sheriff's Offices will be furious with me if they
7 pay to bring him over and he'll be furious with me for
8 being put in isolation if we wait that long.

9 At this point I could object all I want to the
10 continuance, but I think it gets granted if these are the
11 Court's rulings. So we might as well just set November
12 30th for status then move forward as it's going to happen.

13 THE COURT: All right.

14 MS. HAHN: And I'm available November 16th. I
15 have to be done by 10:00 a.m. I have a homicide plea with
16 Judge Bellows at 10:00.

17 THE COURT: All right. Just one moment.
18 Because this is Judge Shannon's assigned case, one moment.

19 MR. SHAPIRO: And Your Honor, if may it please
20 the Court? I know you're going to check with Judge
21 Shannon on the date. I will tell the Court, November 16th
22 for Cybergenetics, for me at least, I have three cases in
23 the morning in GDC, so I can try to go back and forth, but

1 I don't want to inconvenience the Court.

2 THE COURT: That entire week I have calendar
3 control, so any one of those days in the week of the 16th.

4 MR. SHAPIRO: Thank you.

5 (Recess.)

6 THE COURT: Back on the record in the matter
7 of Commonwealth versus Watson, FE-2019-279. Thank you all
8 again. Thank you all for your patience. I had an
9 opportunity to consult with Judge Shannon.

10 What the Court is going to do, we will convert
11 the November 30th trial date to a status date for the
12 purpose of selecting another trial date. In the interim,
13 the continuance will be granted to Mr. Watson.

14 Mr. Kennedy, that would require Mr. Watson to
15 waive speedy trial between the continuance date and
16 whatever new trial date is selected. I would ask that you
17 at least do that on the record.

18 MR. KENNEDY: I think it's statutorily tolled
19 forever anyway, but it's certainly our motion to continue
20 and toll speedy trial.

21 THE COURT: All right. Thank you.

22 So the November 30th court date will remain on
23 the docket, but it will be converted to status. Rather

1 than have us bring, especially considering all of the
2 mechanisms we have to go through for jury trials, I don't
3 want to subject 60 or 50 people to the potential of
4 showing up in the courthouse and then not having this case
5 go forward. And if we move it soon enough, I think there
6 are some sexually violent predator cases that can use that
7 date.

8 Any questions about any aspect of that?

9 MR. KENNEDY: Does the Court still want to set
10 a status the week of November 16th?

11 THE COURT: No. I don't think that's
12 necessary at this point because the point of the
13 intervening status was to see whether or not the trial
14 date was still going to be able to go forward and whether
15 or not you all could work out something between your
16 expert or Cybergenetics and come up with something. I
17 still would hope that the parties would work towards that
18 so that we can try to get this back on the Court's docket,
19 but at this point I don't think it's necessary to have
20 another status before the 30th.

21 So Mr. Watson, at this time you will remanded
22 to the custody of the Sheriff to be processed out.

23 Do you, sir, have any questions about those

1 bond conditions that the Court has set?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Mr. Watson, you need
4 to make sure you stay in touch with Mr. Kennedy and his
5 office. And you need to make sure that you're in contact
6 with the SRP Program and call in as instructed, comply
7 with all the terms of your federal probation, and you need
8 to be back in court present -- you need to be back in
9 court on November 30th with Mr. Kennedy.

10 Yes, sir?

11 (Counsel conferred, off the record.)

12 MR. KENNEDY: Your Honor, could I have one
13 moment of the Court's indulgence?

14 THE COURT: Yes, sir.

15 (Counsel conferred, off the record.)

16 MR. KENNEDY: Thank you.

17 THE COURT: All right.

18 Sir, you will be remanded to the custody of
19 the Sheriff.

20 MS. HAHN: Thank you, Your Honor. Thank you
21 for hearing this matter.

22 MR. SHAPIRO: Thank you, Your Honor.

23 THE COURT: Thank you all. And thank you for

1 your flexibility this morning.

2 MR. KENNEDY: Thank you, Your Honor.

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4 * * * * *

5 (Whereupon, at approximately 10:29 o'clock
6 a.m., the hearing in the above-entitled matter was
7 concluded.)

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CERTIFICATE OF REPORTER

I, PETER P. BLOOM, a Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

PETER P. BLOOM
Verbatim Reporter